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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 292,053	04 14 1999	MITCHELL E. REFF	012712-699	3037

7540 12 18 2001  
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EXAMINER

JAMROZ, MARGARET E

ART UNIT

PAPER NUMBER

1644

DATE MAILED: 12 18 2001

18

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/292,053

Applicant(s)

REFF ET AL

Examiner

Margaret E Jamroz

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 December 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance, (2) a timely filed Notice of Appeal (with appeal fee), or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

## PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action, or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1 ☒ A Notice of Appeal was filed on 04 December 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2 ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal, and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: \_\_\_\_\_
- 3 ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
- 4 ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5 ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet
- 6 ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7 ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none

Claim(s) objected to: none

Claim(s) rejected: 38-47

Claim(s) withdrawn from consideration: none


- 8 ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner
- 9 ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 10 ☐ Other: \_\_\_\_\_

The proposed amendment filed 12/4/01 raises the issue of new matter and new issues that would require further consideration and/or search

The proposed amendment to claim 46 to include SEQ ID NOS: 3, 5, and 7 raises the issue of new matter. The specification discloses on page 47, paragraph 1 and page 50 that SEQ ID NOS: 5 and 7 are primers for the variable heavy and light domains, not the domains themselves. Additionally, page 58 of the specification discloses that SEQ ID NO: 3 is a light chain variable domain, not a variable heavy domain.

The said proposed amendment also includes SEQ ID NOS: 1, 3, 5, and 7 which raises issues that would require further consideration and/or search

The declaration pursuant to 37 CFR 1.132 filed by Dr. Richard G. Lizambri on 12/4/01 is unsigned. It is persuasive in that it shows that an anti-CD23 antibody decreased IgE concentrations in patients with mild persistent or moderate persistent allergic asthma as shown in clinical trials. Dr. Lizambri also states that the anti-CD23 antibody would be effective in treating autoimmune diseases, but does not present evidence to that effect, and is considered unpersuasive as most autoimmune diseases are generally mediated by IgG antibodies; therefore, treatment with anti-CD23 would be ineffective.

  
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